IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.689 OF 2004

IN

SUIT NO.658 OF 2004

...

Mr.S. Gopinathan & anr. ...Plaintiffs

v/s.

Mr.Narendra Gupta ...Defendant

...

Mr.K.R. Dhanuka for the Plaintiffs.

Mr.P.K. Samdhani with Ms. Radhika Pinjare i/b P.K. Shroff & Co. for the Defendant.

...

CORAM: D.K.DESHMUKH, J.

DATED: 30TH NOVEMBER, 2004

P.C.:

1. This Notice of Motion is taken out by the Plaintiffs. Heard the learned Counsel for both

sides. Perused the record. Dispute between the parties relates to the amount mentioned at serial nos.1, 7 & 8 in paragraph 8 of the affidavit of the Defendant Narendra Gupta. Those items are (1) Rs.1,22,500/- being the balance consideration for purchase of the suit flat under the agreement; (7) Rs.45,000/- being Gymkhana and club-membership charges and (8) Rs.30,000/- being charges for car-parking.

2. There is no dispute between the parties that the amount mentioned at item Nos.2 to 6, 9 & 10 of the said paragraph are payable by the Plaintiffs to the Defendant.

3. After having heard the learned Counsel for both sides, in my opinion, following order would meet the ends of justice.

O R D E R

(I) Upon the Plaintiffs paying to the Defendant the amount mentioned in items Nos.2 to 6, 9 & 10 in paragraph 8 of the affidavit of Mr.Narendra Gupta dated 18th March, 2004 as below:

(ii) Rs.251/- being Registration of society charges.

(iii) Rs.500/- being Legal expenses for society Formation.

(iv) Rs.14,000/- being Electricity, Water Charges.

(v) Rs.10,950/- being maintenance charges for six months.

(vi) Rs.500/- being legal charges for drafting of Agreement for sale.

(ix) Rs.10,950/- being corpus fund charges.

(x) Rs.9,490/- being Development Charges.

and the Plaintiffs depositing in this Court the amount mentioned against items Nos. 1, 7 & 8 as below:

(i) Rs.122,500/- being the balance consideration for purchase of the suit flat under the said Agreement;

(vii)Rs.45,000/- being Gymkhana charges/club membership charges.

(viii)Rs.30,000/- being charges for car park.

with due intimation to the Defendant within a period of four weeks from today, the Defendant shall deliver to the Plaintiffs peaceful possession of Flat No.005 on the ground floor of Building No.1 at N.G. Complex, Marol, Andheri (East), Mumbai- 400 059 constructed on the land bearing survey No.14(Pt.) and C.T.S. Nos.29/1 to 19 situated at village Tungva, Kurla Taluka, Mumbai, within a period of four weeks from the date of deposit.

(II) After the deposit is made by the Plaintiffs, on an application being made by the Defendant, the Prothonotary & Sr.Master shall permit the Defendant to withdraw the amount directed to be deposited by the Plaintiffs on the Defendant furnishing an undertaking to the Court undertaking to redeposit the amount if so directed by this Court and on such terms and conditions including term as to payment of interest as may be directed by this Court.

(III) It is clarified that the Defendant is handing over possession of the flat to the Plaintiffs subject to the result of this suit.

(IV) As the handing over of possession is subject to the result of the suit, the Plaintiffs are restrained from disposing of, alienating or part with possession of the flat in question without seeking leave of the Court during the pendency of the suit.

(V) In case, the Defendant is having in his possession the original cheques dated 8-11-2003 and 10-11-2003 issued by the Plaintiffs in favour of the Defendant, the Defendant shall deposit the original documents in the custody of the Prothonotary & Sr..Master.

(VI) As the handing over of possession is subject to the result of the suit, the Plaintiffs are restrained from disposing of, alienating or parting with possession of the flat in question without seeking leave of the Court during the pendency of the suit.

Notice of Motion disposed of.

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